

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOONAN W. GREENE and TENNESSEE VALLEY AUTHORITY,
Chattanooga, TN

*Docket No. 98-1834; Submitted on the Record;
Issued August 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on September 30, 1996 causally related to his May 22, 1995 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing a recurrence of disability.

Appellant, an engineering aide-nuclear, filed a claim on May 23, 1995 alleging that on May 22, 1995 he injured his left knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for left knee sprain and torn medial meniscus with arthroscopy on March 21, 1996. Appellant returned to regular duty on June 26, 1996.¹ He filed a notice of recurrence of disability on February 11, 1997 alleging on September 30, 1996 he sustained a recurrence of disability causally related to his May 22, 1995 employment injury when the employing establishment terminated his position due to a reduction-in-force. On the reverse of the form, appellant's supervisor stated that appellant was performing the full duties of his position as an engineering aide. By decision dated May 6, 1997, the Office denied appellant's claim for recurrence of disability due to a lack of medical evidence.²

Appellant requested

¹ The record suggests that appellant accepted the position of engineering aide in 1991 as a light-duty position and that he sustained a loss of wage-earning capacity due to this change in position.

² Appellant received a schedule award for 31 percent permanent impairment of his left lower extremity on May 15, 1997.

reconsideration on January 30, 1998 and by decision dated February 18, 1998, the Office denied modification of its May 6, 1997 decision.³

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing September 30, 1996 and his May 22, 1995 employment injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

In this case, appellant attributed his recurrence of disability to the reduction-in-force by the employing establishment, which resulted in his termination on September 30, 1996. The Office's procedure manual provides that a true reduction-in-force, in which both regular and light duty employees are terminated, is not considered to be a recurrence of disability and that the Office is to deny claims for recurrence predicated on such reductions-in force-following a wage-earning capacity determination unless there is a material change in the injury related condition.⁶ The procedure manual further specifically excludes reductions-in-force from the definition of recurrence.⁷ Therefore, the fact that appellant is no longer able to work at the employing establishment due to a reduction-in-force is not sufficient to establish a recurrence of disability.

The Office properly reviewed the medical evidence to determine whether appellant had sustained a recurrence of disability, defined as a spontaneous material change in the employment-related condition without an intervening injury.⁸

The medical evidence in this case consists of a December 11, 1996 report from Dr. Wyatt C. Simpson, Jr., a Board-certified orthopedic surgeon, noting that appellant's left knee was now painless. He stated that appellant had limited range of motion. In a form report dated December 30, 1996, Dr. Simpson stated that, appellant could return to light-duty work with restrictions on prolonged walking and unprotected climbing. Dr. Simpson completed a narrative report on December 30, 1996 and stated that appellant complained of left knee pain and had limited range of motion. He stated that partial impairment and disability were not synonymous and did not provide an opinion on appellant's disability for his regular-duty work. These reports are not sufficient to establish that appellant sustained a material change in his accepted

³ Following the Office's February 18, 1998 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 8.14.12 (July 1997).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(2)(c) (May 1997).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (May 1997).

employment condition such that he sustained a recurrence of disability on or after September 30, 1996.

Appellant also submitted a series of medical notes from Dr. John T. Murphy, a Board-certified orthopedic surgeon. On February 28, 1997 appellant reported an aching-type pain in his left knee with prolonged weight bearing or walking. Dr. Murphy diagnosed degenerative arthritis. He repeated this diagnosis on April 2, 1997. On April 4, 1997 Dr. Murphy stated that appellant's knee pain had worsened. On June 27, 1997 appellant's knee pain had greatly resolved. On July 30 and September 19, 1997 appellant reported fewer complaints regarding his knee. Dr. Murphy did not provide an opinion regarding whether appellant had sustained a material change in his knee condition. His notes indicate that appellant experienced varying degrees of discomfort in his knee, but did not specifically address the issue of an adverse change in his knee condition. Indeed, appellant's knee condition apparently improved throughout 1997.

Appellant also submitted evidence that on October 26, 1997 the Social Security Administration found that appellant was entitled to benefits beginning July 5, 1997. The Board has held that an administrative law judge's decision that appellant was disabled under the Social Security Act is not dispositive in a case under the Federal Employees' Compensation Act as entitlement to benefits under one act does not establish entitlement to benefits under the Federal Employees' Compensation Act.⁹

As appellant has failed to submit the necessary rationalized medical opinion evidence establishing a material change in his left knee condition, the Office properly denied his claim for a recurrence of disability.

⁹ *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).

The February 18, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 10, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member